

Message Text

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USOECD

FOLLOWING REPEAT GENEVA 01670 ACTION SECSTATE DATED FEB 03:

QTE: LIMITED OFFICIAL USE GENEVA 01670

USMTN

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E.O. 11652: N/A
TAGS: MTN, ETRD
SUBJECT: GOVERNMENT PROCUREMENT PLURILATERAL, FEB. 2

REF: GENEVA 1599

1. SUMMARY: MAJOR DEVELOPED COUNTRIES TODAY AGREED ON
OUTLINE OF GOVERNMENT PROCUREMENT WORKPLAN THROUGH
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THE MONTH OF MARCH. ALL DELS EXHIBITED POSITIVE
AND COOPERATIVE ATTITUDE TOWARD SIGNIFICANT PROGRESS
IN THIS AREA WITHIN THE JULY 15 TIMEFRAME. THE PLURI-
LATERAL GROUP WILL MEET ON FEBRUARY 14 TO DISCUSS
A METHOD OF NEGOTIATING COVERAGE AND WILL MEET WITH
LDC'S ON FEBRUARY 15. IT WAS ALSO AGREED THAT
PLURILATERAL DRAFTING GROUP WOULD MEET ENTIRE WEEK
OF MARCH 13 FOR PURPOSES OF CLEANING-UP THE DRAFT
GOVERNMENT PROCUREMENT CODE TO THE EXTENT POSSIBLE.
A FORMAL SUBGROUP MEETING WILL BEGIN ON MARCH 20.

END SUMMARY.

2. MAJOR DEVELOPED COUNTRIES (US, EC, CANADA, JAPAN, NORDICS AND SWITZERLAND) MET TO OUTLINE WDRKPLAN FOR GOVERNMENT PROCUREMENT NEGOTIATIONS DURING NEXT FEW MONTHS. ON HOW TO PROCEED, US (NEWKIRK) AND EC (DERISBOURG) MET INFORMALLY BEFORE PLURILATERAL MEETING AND AGREED THAT WE MUST MOVE QUICKLY IF WE ARE TO MEET THE SPRING DEADLINE FOR A COMPLETED CODE. OUTLINE FOR WORK DISCUSSED BY US/EC WAS ACCEPTED BY PLURILATERAL GROUP AS BASIS OF PROCEEDING. IT WAS AGREED THAT WHILE SUBGROUP MEETINGS ARE OCCASIONALLY NECESSARY TO LEGITIMIZE INFORMAL SESSIONS, DRAFTING WAS NOT POSSIBLE IN THE FULL SUBGROUP. ACCORDINGLY, THE PLURILATERAL GROUP AGREED TO MEET THE ENTIRE WEEK OF MARCH 13 INFORMALLY, FOLLOWED BY TWO OR THREE DAYS OF FORMAL MEETINGS, BEGINNING MARCH 20. IN THE PERIOD BETWEEN NOW AND MARCH 13, DELEGATIONS WILL MEET IN SMALL GROUPS TO DISCUSS PROGRESS ON THE ISSUES TARGETED FOR THE INFORMAL MEETINGS. ADDITIONALLY, IT WAS AGREED TO HAVE AN INFORMAL MEETING ON FEBRUARY 14 TO CONTINUE THE DISCUSSION ON PROCEDURES FOR COVERAGE NEGOTIATIONS AND TO MEET WITH INTERESTED DEVELOPING LIMITED OFFICIAL USE LIMITED OFFICIAL USE

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COUNTRIES ON FEBRUARY 15 TO DISCUSS S&D AND THEIR COMMENTS ON THE DRAFT.

3. IN REGARD TO THE SPECIFIC TOPICS TO BE DISCUSSED MARCH 13, CONSENSUS EMERGED TO FOCUS ON CLEANING UP THE NEGOTIATING TEXT, DISPUTE SETTLEMENT, TRANSPARENCY AND S&D. DERISBOURGS COMMENTS ON THESE ISSUES FOLLOW:

(1) A LINE-BY-LINE EXAMINATION OF GATT GOVERNMENT PROCUREMENT NEGOTIATING DOCUMENT. THE OBJECTIVE OF THIS EXAMINATION WOULD BE TO REMOVE AS MANY BRACKETS AS POSSIBLE PARTICULARLY THOSE OF LITTLE APPARENT SUBSTANCE.

(2) DISPUTE SETTLEMENT. EC FEELS THIS IS ESSENTIAL TO GOVERNMENT PROCUREMENT CODE AND THAT A DISCUSSION OF THIS ISSUE CANNOT BE PUT OFF ANY LONGER. (WE SUBSEQUENTLY LEARNED (REFTEL) THAT 113 TAKING UP DISPUTE SETTLEMENT ON FEBRUARY 3.)

(3) TRANSPARENCY. DERISBOURG STATED THAT THE CANADIAN SUGGESTION ON TRANSPARENCY WAS SO UNACCEPTABLE TO THE EC THAT US POSITION APPEARED TO HOLD POSSIBILITY OF EVENTUAL COMPROMISE. DERISBOURG OPINED THAT US "COM-PROMISE" POSITION ON TRANSPARENCY WAS TABLED TOO

EARLY FOR A PROPER REACTION BY THE EC AND THE TIMING OF THE EVENTUAL US/EC COMPROMISE IS A QUESTION OF TACTICS. WHEN THE US DEL POINTED OUT THAT SIX-MONTH TIMEFRAME DID NOT LEAVE US MUCH TIME FOR TACTICAL MANEUVERING, EC STATED THAT HE WOULD CONSIDER THE TIMING ASPECT AND BE BACK TO US DEL WITHIN THE NEXT COUPLE OF WEEKS.

(4) S&D. EC DEL STATED THAT HE THOUGHT S&D WOULD BE MAJOR TOPIC OF ANY FORMAL MEETING AND WHILE THIS LIMITED OFFICIAL USE LIMITED OFFICIAL USE

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SUBJECT IS NOT ESSENTIAL TO COMPLETION OF THE CODE AMONG THE DEVELOPED COUNTRIES WE SHOULD EARNESTLY AND HONESTLY ADDRESS THIS QUESTION IN THE NEXT INFORMAL SESSION.

(4) TER AGREEING ON WORKPLAN, DISCUSSIONS AT PLURI-LATERAL MEETING CENTERED PRIMARILY ON MOST EFFICIENT MEANS FOR CONDUCTING COVERAGE NEGOTIATIONS. ALTHOUGH DELS WERE NOT WILLING TO REACH CONSENSUS AT THIS STAGE ON BEST MEANS FOR CONDUCTING ENTITY NEGOTIATIONS, CERTAIN IDEAS SEEMED TO DOMINATE THE DISCUSSION. FOR THE MOST PART, ALL DELS, EXCEPT SWISS, FAVORED AN ENTITY-BY-ENTITY NEGOTIATION IN WHICH A POSITIVE LIST OF ENTITIES TO BE COVERED BY THE GOVERNMENT PROCUREMENT CODE WOULD BE NEGOTIATED. SWISS DEL (EBERHARDT) MAINTAINED POSITION PUT FORTH PREVIOUSLY THAT BEST MEANS FOR NEGOTIATING ENTITIES WOULD BE TO HAVE GENERAL DEFINITION THAT ALL GOVERNMENT PROCUREMENT IS COVERED BY THE CODE WITH THE EXCEPTION OF AN AGREED LIST OF ENTITIES. AFTER SIGNIFICANT PRESSURE FROM CANADIANS, NORDICS AND EC, SWISS DEL FRANKLY STATED THAT GOS NEGOTIATING APPROACH WAS PREMISED ON THE CANTONAL SYSTEM WITHIN SWITZERLAND. THE SWISS FEDERAL GOVERNMENT BELIEVES THAT IT COULD NOT DIRECTLY RECEIVE AGREEMENT FROM CANTONS TO BE INCLUDED IN A GOVERNMENT PROCUREMENT CODE. HOWEVER, HE FEELS THAT IF THE CODE CONTAINED A GENERAL INCLUSION OF ALL GOVERNMENT PURCHASING, CANTONS WOULD BE COVERED BY SUCH DEFINITION AND ENFORCEMENT OF THE CODE'S PROVISIONS COULD SUBSEQUENTLY BE IMPOSED ON THE CANTONS BY THE FEDERAL GOVERNMENT. AFTER ADMITTING THAT OTHER COUNTRIES, I.E., CANADA, HAD A SIMILAR PROBLEM, SWISS AGREED TO CONSIDER HOW THEY MIGHT APPROACH THE PROBLEM LIMITED OFFICIAL USE LIMITED OFFICIAL USE

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A DIFFERENT WAY.

5. CANADIAN DEL (CLARK) INDICATED THAT INTERNALLY, THE GOC HAS DECIDED THAT THE BEST MEANS OF INITIATING COVERAGE NEGOTIATIONS WOULD BE ON A REQUEST/OFFER BASIS. CANADIAN REASONING FOR SUCH AN APPROACH IS THAT ALTHOUGH THEY ARE WILLING TO INITIALLY SET DOWN A LIST OF ENTITIES WHICH COULD BE SUBJECT TO THE CODE, SUCH A LIST WOULD CONTAIN NO MORE THAN THOSE DIRECT FEDERAL GOVERNMENT AGENCIES WHICH WERE SUBMITTED TO THE OECD. ON THE OTHER HAND, CANADIAN DEL BELIEVES THAT IF COUNTRIES REQUEST SPECIFIC PRODUCTS OR AREAS OF INTEREST, SUCH AS CROWN PURCHASING ENTITIES, THE GOC WILL BE IN A BETTER POSITION TO INCLUDE THEM UNDER CODE COVERAGE. EC DEL (STRUXIANO) INDICATED THAT EC WOULD BE PREPARED BY THE END OF THIS MONTH TO TABLE IN THE PLURILATERAL GROUP A LIST OF THOSE EC ENTITIES WHICH COULD CONCEIVABLY BE COVERED BY A GOVERNMENT PROCUREMENT CODE. THE LIST WILL INDICATE THE PRODUCTS AND AMOUNTS PURCHASED BY THE VARIOUS ENTITIES. IN RESPONSE TO A QUESTION, EC DEL STATED THIS LIST WOULD CONSTITUTE INITIAL NEGOTIATING POSITION. NORDIC DEL (LEMMEL) INDICATED THAT THEY, AS A MEANS OF ELICITING OFFERS OF APPROPRIATE ENTITIES, COULD FORESEE THE POSSIBILITY OF A SIMULTANEOUS REQUEST/OFFER PROCEDURE DEPENDING ON A COUNTRY'S PARTICULAR SITUATION.

6. JAPANESE DEL (ABE) WAS THE MOST RETICENT OF THE GROUP. HE RAISED THE TRADITIONAL "CHICKEN AND EGG" THEORY AND INDICATED JAPAN COULD NOT BE FORTHCOMING IN ENTITIES UNTIL THEY WERE CERTAIN ABOUT SOME OF THE PROCEDURES IN THE CODE. U.S. DEL REITERATED U.S. POSITION CONCERNING TWO-STAGE NEGOTIATIONS AND INDICATED THAT MANY OF THE PROCEDURAL QUESTIONS WHICH WOULD BE DISCUSSED IN DEVELOPING A FINAL CODE WOULD NOT NECESSARILY BE LINKED TO ENTITY COVERAGE. US DEL INDICATED THAT WE WERE FLEXIBLE IN LIMITED OFFICIAL USE
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MEANS OF APPROACHING NEGOTIATION AND CONTINUED TO SEEK AS BROAD A COVERAGE AS POSSIBLE.

7. ACTION REQUESTED: TO ALLOW US TO ADHERE TO THIS AMBITIOUS WORKPLAN MTN DEL NEEDS, ON AN URGENT BASIS, NEGOTIATING INSTRUCTIONS FOR UPCOMING SESSIONS THAT CONTAIN THE FOLLOWING MAJOR POINTS:

(1) US POSITION THAT ITS PRIMARY INTEREST AND OBJECTIVE IS TO RECEIVE A TIGHTLY WRITTEN CODE, EVEN AT THE EXPENSE OF LESS COVERAGE. SUCH A CODE MUST INCLUDE DETAILED AND BINDING RULES AND PROCEDURES FOR THOSE ENTITIES THAT ARE COVERED AND A THRESHOLD VOLUME THAT WILL INCLUDE ALL SIGNIFICANT GOVERNMENT CONTRACTS.

CONCOMITANT WITH THIS WOULD BE A PROVISION FOR GOVERNMENTS TO AGREE TO ATTEMPT TO NEGOTIATE EXPANDED COVERAGE IN THE FUTURE;

(2) THE US SHOULD CONTINUE TO AIM FOR THE FULLEST POSSIBLE CODE COVERAGE. THIS SHOULD BE DONE ON AN ENTITY-BY-ENTITY BASIS WITH RECIPROCITY OF CONCESSIONS BEING THE PRIMARY DETERMINANT OF SPECIFIC COVERAGE;

(3) US DEL SHOULD BE ABLE TO ENTER INTO PRODUCT NEGOTIATIONS, IF NECESSARY. HOWEVER SUCH NEGOTIATIONS SHOULD NOT BE ENTERED INTO INTERNATIONALLY UNTIL IT IS SEEN THAT THIS IS A NECESSARY MEANS FOR ACHIEVING THE DESIRED RESULTS. THE PRODUCT NEGOTIATIONS COULD ASSUME TWO DIRECTIONS (A) EXCLUSIONS OF PARTICULAR PRODUCTS FROM ENTITIES WHEN OTHER COUNTRIES ARE UNWILLING TO ADD PRODUCTS OR ENTITIES OF INTEREST TO THE UNITED STATES OR (B) POSITIVE OFFERING OF SUCH PRODUCTS IF OTHERS OFFER PRODUCTS OF INTEREST TO THE LIMITED OFFICIAL USE
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UNITED STATES;

(4) THRESHOLD SHOULD BE NEGOTIATED CONCURRENTLY WITH LEVELS OF OBLIGATION. TACTICALLY THE US SHOULD CONTINUE ITS POSITION FOR A \$50,000 THRESHOLD BUT COULD SETTLE FOR A HIGHER THRESHOLD IF OTHERS AGREE TO PROVIDE CONCESSIONS DESIRED BY THE UNITED STATES.

7. COPY OF DRAFT TPSC INSTRUCTIONS, PREPARED BY COMMERCE AND HAND-DELIVERED BY RECENT GENEVA TRAVELER WOULD MEET NEEDS OF MTN DEL. MTN DEL STRONGLY URGES TPSC CONSIDERATION OF THIS PAPER AT EARLIEST POSSIBLE DATE. THIS PAPER, ALONG WITH PAST INSTRUCTIONS ON CODE PROVISIONS, WOULD ENABLE US TO CONTINUE WITH NEGOTIATIONS AT ACCELERATED PACE.

8. DRAFTED BY SHELLEY. CULBERT UNQTE VANCE

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